IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.722 OF 2005

Shri Nazir Usman Sheikh & Anr. : Petitioners
(Orig.Defendants)

V/s.

Shri Sultan Gulamhusen Shaikh & Anr. : Respondents
(Orig. Plaintiffs)

...

Mr.S.B. Shetye for the petitioners.

Mr.S.B.Deshmukh for the respondents.

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**CORAM : S.A. BOBDE, J.**

July 7, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Deshmukh, learned counsel, appears and waives service of rule on behalf of the respondents.

Heard by consent.

2. The petitioners, who have been sued by the respondents for an injunction, have challenged the grant of the injunction granted by the VIth Addl. District Judge, Satara. It appears that the petitioners wanted to have a construction on the western side of their property which is C.S. no.496A of certain open space. There appears to be dispute between the ownership of the open space which

may be decided at the hearing of the suit. I do not express any opinion on this aspect of the matter.

3. It appears that the respondents are residing on the western side of the petitioners' property and there is a clear finding of the appellate Court that the respondents have been using the suit property at least since a couple of years prior to the filing of the suit as is admitted by the petitioners themselves in their say to the application. In the circumstances, the appellate Court has granted an injunction in spite of the controversy whether the suit property is a part and parcel of the respondents' property or the petitioners' property. There is no infirmity, jurisdictional or otherwise in the impugned order. A prima facie case has been made out by the respondents on the basis of user before the filing of the suit. The balance of convenience is also in the respondents' favour and the injury is of a kind which cannot be compensated in terms of money.

4. In the result, the petition is dismissed. The trial Court is directed to dispose of the suit, as expeditiously as possible, and not later than one year from the next date. The trial Court shall decide the suit uninfluenced by the observations in this order.

5. The rule stands discharged.

S.A. BOBDE, J.